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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,954	12/08/2003	Francois Cottard	06028.0035-00	9017
22852	7590	06/23/2006		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	10/728,954	COTTARD ET AL.	
	Examin r	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24, 43-47, 56, 57 and 60-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 14-15, 23-24, 43-47, 56-57 and 60-102 is/are rejected.
- 7) ☒ Claim(s) 5-7, 11-13 and 16-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on April 20, 2006.

2 The cancellation of claims 25-42, 48-55 and 58-59 is acknowledged. Pending claims are
3 1-24, 43-47, 56-57 and 60-102.

3 Claims 1-3, 43-44 and 60-102 stand rejected under 35 U.S.C. 103(a) as being
unpatentable over Cottard et al. (US' 515 A1) for the reasons set forth in the previous office
action that mailed on 10/28/2005.

4 Claims 4, 8-10, 14-15 and 23-24 stand rejected under 35 U.S.C. 103(a) as being
unpatentable over Cottard et al. (US' 515 A1) in view of Legrand et al. (US' 429 A1) for the
reasons set forth in the previous office action that mailed on 10/28/2005.

5 Claims 45-47 and 56-57 stand rejected under 35 U.S.C. 103(a) as being unpatentable over
Cottard et al. (US' 515 A1) in view of Laurent et al. (US' 431 A1) for the reasons set forth in the
previous office action that mailed on 10/28/2005.

6 Claims 5-7, 11-13 and 16-22 objected to for the reasons set forth in the previous office
action that mailed on 10/28/2005.

Response to Applicant's Arguments

7 Applicant's arguments filed 4/20/2006 have been fully considered but they are not
persuasive.

With respect to the rejection of claims 1-3, 43-44 and 60-102 under 35 U.S.C. 103(a) as
being unpatentable over Cottard et al. (US' 515 A1), Applicant argues that the examiner has not
established a prima facie case of obviousness because there is no teaching or suggestion in
Cottard et al. that the weight ratio between aminosilicone compounds and associative polymer is

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a result-effective parameter. Applicant also argues that Cottard et al. does not teach associative polymers of the present amended claims.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. “*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In this case Cottard et al. (US’ 515 A1) teaches a dyeing composition comprising oxidation dyes (see page 5, paragraph, 0105), cationic thickening polymers comprising at least one fatty chain chosen from quaternized cellulose modified by groups comprising at least one fatty chain, quaternized hydroxyethylcellulose modified by at least one group comprising at least one fatty chain and wherein the thickener polymers are presented in the amount of 0.01 to 10 % and 0.1 to 5% (see page 5, paragraphs, 0093-0104). Cottard et al. also suggests the use of effective quantities of other agents that are already known for oxidation coloration and organomodified silicones are among these agents (see page 17, paragraph, 0337). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to optimize the weight ratio of the aminosilicone to the cationic associative polymers to arrive at the claimed invention.

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Further, as the optimization of results, a patent will not be granted based upon the optimization of result effective variable when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness, see *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F. 2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case applicant has not shown on record the criticality of the claimed ratio in the claimed composition.

8 With respect to the rejection of claims 45-47 and 56-57 under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US' 515 A1) in view of Laurent et al. (US' 431 A1), Applicant argues that the examiner has failed to show that Cottard et al. teaches or suggests all the limitations of the base independent claims.

The examiner respectfully disagrees with the above arguments for the same reasons mentioned above.

9 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

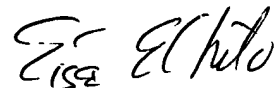
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo
Primary Examiner
Art Unit 1751

June 19, 2006